

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Chan and Cedillo Analyst: Kristina E. North Bill Number: AB 989
Related Bills: See Legislative History Telephone: 845-6978 Amended Date: August 22, 2002
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Exclusion/Holocaust Restitution Payments

SUMMARY

This bill would exclude from gross income Holocaust restitution payments received by an individual or by the individual's heir or estate.

SUMMARY OF AMENDMENTS

The August 22, 2002, amendments would replace the language in the bill with an exclusion from gross income of Holocaust restitution payments received by an individual, the individual's heir or estate including any related excludable interest.

This bill also would make changes to the Education Code, the Unemployment Insurance Code, and the Welfare and Institutions Code. These changes would not affect the department and are not discussed in this analysis.

This is the department's first analysis of this bill.

PURPOSE OF THE BILL

It appears the purpose of this bill is to broaden existing gross income exclusions for German reparation payments to include more victims of the Holocaust.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2003, and would apply retroactively to any amount received on or after January 1, 2000.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Existing federal and state laws provide that gross income includes all income from whatever source derived, including compensation for services, business income, gains from property, interest, dividends, rents, and royalties, unless specifically excluded.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department Director

Date

Gerald H. Goldberg

9/6/02

Existing federal and state laws provide that certain types of income are excluded from gross income, such as amounts received as a gift or inheritance, certain compensation for injuries and sickness, qualified scholarships, educational assistance programs, foster care payments, and interest received on certain state or federal obligations.

An **existing federal treaty** provides that awards received pursuant to the German Act Regulating Unresolved Property Claims are exempt from U.S. taxation. In addition, federal income tax law excludes from gross income Holocaust restitution payments and their interest that are received by an individual or by the individual's heir or estate.

Existing state tax law excludes from an individual's income any amounts received as reparation payments paid by a German Foundation known as Remembrance, Responsibility, and the Future, or by any other source of humanitarian reparations. The reparation payments must be for the purposes of redressing the injustice done to persons who were required to perform slave or forced labor during World War II.

Existing state tax law also excludes from an individual's gross income any amounts received, including interest and the value of property, pursuant to the German Act Regulating Unresolved Property Claims. The basis of any property received as compensation is the fair market value determined at the time of receipt by the taxpayer. Further, any amounts, including interest or property, received by a victim (or heir or beneficiary thereof) of the Holocaust as a result of a settlement of claims against any entity or individual for any recovered asset is excluded from gross income. "Holocaust victim" is defined as any person persecuted by Nazi Germany or any Axis regime from 1933 to 1945. "Recovered asset" is defined as any asset including bank deposits, insurance proceeds, or artwork (and including interest earned on the assets) owned by a Holocaust victim between 1920 and 1945 and not recovered or compensated for until 1995 or thereafter.

THIS BILL

Similar to federal law, discussed above, this bill would exclude from an individual's gross income "excludable restitution payments" and their related "excludable interest," as defined below.

This bill would define:

- ◆ "eligible individual" as a person persecuted by Nazi Germany, any Axis regime, or any other Nazi-controlled or Nazi-allied country.
- ◆ "excludable restitution payment" as a payment or distribution to an individual or their heir or estate that:
 1. Comprise an amount payable to an "eligible individual," including those amounts payable:
 - by any foreign country, the United States, any other foreign or domestic entity, or fund established by such country or entity,
 - as a result of a final legal action, and
 - under a law providing for payments or restitution of property.
 2. Constitutes the direct or indirect return, compensation, or reparation for assets stolen, hidden, or otherwise lost to the individual with respect to World War II. This would include insurance proceeds under policies issued on "eligible individuals" by European insurance companies immediately before and during World War II.
 3. Consists of interest that is part of the payments described in 1 and 2, above.

♦ “excludable interest” as any interest earned by any of the following:

1. Escrow accounts or settlement funds established pursuant to the settlement of a specified action entitled “*In re: Holocaust Victim Assets Litigation*,” (E.D.N.Y.) C.A. No. 96-4849;
2. Specific funds to benefit eligible individuals or their heirs created by the International Commission on Holocaust Insurance Claims.
3. Similar specified funds subject to administration of the U.S. courts created to provide excludable restitution payments to eligible individuals or their heirs or estates.

The basis of any property received by an eligible individual (or his or her heirs or estate) as part of an excludable restitution payment would be the fair market value of that property at the time of receipt.

This provision would retroactively apply to any amount received by an individual on or after January 1, 2000.

IMPLEMENTATION CONSIDERATION

This bill does not contain a public purpose statement, thus, it could be interpreted as a gift of public funds.

TECHNICAL CONSIDERATIONS

The two other German reparation exclusions are located together in the Revenue and Taxation Code (R&TC) in Sections 17155 and 17155.5. The author may wish to similarly number this provision.

This bill would add a section to the Education Code that contains a cross-reference to R&TC Section 17133.1 to define “excludable restitution payments.” Section 17133.1 of the R&TC is a non-existent section. It appears the bill should have referenced another provision of this bill, Section 17131.1, which contains the appropriate definition.

LEGISLATIVE HISTORY

AB 1728 (Villaraigosa, Stats. 2000, Ch. 685) excluded from gross income any amounts received as reparation payments paid by the German Foundation known as Remembrance, Responsibility, and the Future, or by any other source of humanitarian reparations.

SB 714 (Lockyer and Brulte, Stats. 1996, Ch. 29) excluded from gross income any amounts received, including interest and the value of property, pursuant to the German Act Regulating Unresolved Property Claims as restitution for property that was confiscated or subject to forced sale prior to or during World War II.

SB 1397 (Brulte and Lockyer, Stats. 1998, Ch. 18) excluded from the gross income of a victim (or heir or beneficiary thereof) of the Holocaust any amounts, including interest or property, received as a result of a settlement of claims against any entity or individual for any recovered asset.

PROGRAM BACKGROUND

In 1990, following the reunification of the German Democratic Republic and the Federal Republic of Germany, the German government passed the German Act Regulating Unresolved Property Claims (the Act). Pursuant to the Act, the German government awards compensation for property located in the former East Germany that the National Socialist Regime confiscated or subjected to forced sale prior to or during World War II. Under the Act, former property owners (or their heirs) receive compensation in the form of money or substitute property, if the original property cannot be returned. Pursuant to the United States-Federal Republic of Germany Income Tax Convention, Aug. 29, 1989, S. Treaty Doc. No. 10, 101st Cong., Sess. (1990), these amounts are exempt from federal income taxation. The exemption extends to the entire award amount, regardless of whether a portion represents interest. This Treaty is not applicable at the state level.

In 1997, the Swiss Bankers Association published three lists of accounts that had been dormant since World War II. Two of these lists contained the account names of non-Swiss individuals. The publication of these lists and the creation of a special claims resolution process are efforts to simplify the process of searching for unclaimed assets that may be held in Swiss banks in dormant bank accounts opened by foreign citizens prior to the end of World War II. The Swiss Banking Ombudsman has established a central contact office to assist Holocaust survivors and heirs of Holocaust victims in matching their claims for assets that may be held in Swiss banks.

OTHER STATES' INFORMATION

Massachusetts and *New York* exclude from an individual's gross income, to the extent included in federal gross income:

- ◆ distributions or payments, including interest, made to a victim (or heir) of persecution for racial or religious reasons by Nazi Germany or any other Axis regime; and
- ◆ income attributable to, derived from assets stolen, hidden from, or otherwise lost to Germany or any other Axis regime immediately prior to, during, and immediately after World War II.

Illinois subtracts reparations or other amounts received as a victim (or heir) of persecution for racial or religious reasons by Nazi Germany or any other Axis regime that are included in adjusted gross income.

Michigan deducts, to the extent included in an individual's adjusted gross income, any settlement amount and any interest on that amount:

- ◆ for any recovered asset resulting from specified civil actions that is received in the tax year by a Holocaust victim; or
- ◆ resulting from a similar action if the income and interest are not commingled in any way with and are kept separate from all other funds and assets of the taxpayer.

FISCAL IMPACT

It is unknown how many taxpayers would be receiving payments, but the department's costs are expected to be minor.

ECONOMIC IMPACT

Revenue Estimate

It is not possible to develop reliable revenue estimates at this time due to uncertainties, including:

- ◆ the total amount of restitution payments including property concessions by various jurisdictions; and
- ◆ the total number of qualified taxable California recipients and the amount of restitution received.

However, federal law contains a provision virtually identical to this bill and by extrapolating the projected federal losses, which are estimated at \$3 million per year, the department anticipates the revenue loss to the state to be minor (less than \$500,000 per year.)

LEGISLATIVE STAFF CONTACT

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